

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRED B. HOVEY, III,

Defendant.

Case No.: 12cr624-CAB

**ORDER DENYING MOTION TO
REDUCE SENTENCE [Doc. No. 71]**

On January 25, 2021, defendant Fred B. Hovey, III filed (under seal) a motion for sentence reduction pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). [Doc. No. 71.] The motion was denied without prejudice as the defendant did not demonstrate he had first exhausted his administrative remedies or that 30 days had expired since he made a request to the warden of his facility to file a motion for release on his behalf. 18 U.S.C. § 3582(c)(1)(A). [Doc. No. 72.] On February 6, 2021, the defendant filed documents demonstrating that he had exhausted administrative remedies, so the Court reinstated his motion. [Doc. No. 74.] The matter has been fully briefed and the motion is suitable for determination on the papers.

A court may modify or reduce the defendant's term of imprisonment after considering the factors set forth in 18 U.S.C. § 3553(a), if the court finds that "extraordinary and compelling reasons" justify the reduction and that "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18

1 U.S.C. § 3582(c)(1)(A)(i). Defendant requests early release because his age and medical
2 conditions put him at an increased risk for life-threatening complications if he were to
3 contract the Covid-19 virus in custody. As the movant, the defendant bears the burden to
4 establish that he is eligible for a sentence reduction. *United States v. Varnado*, 2020 WL
5 2512204, at *1 (S.D. Cal., May 15, 2020); *United States v. Holden*, 2020 WL 1673440, at
6 *3 (D. Or., April 6, 2020.)

7 **II. Case Background**

8 The Defendant was sentenced on March 21, 2013 to 120 months in the custody of
9 the Bureau of Prisons (BOP), followed by a four-year term of supervised release, on one
10 count of importation of heroin, in violation of 21 U.S.C. §§ 952 and 960. [Doc. No. 55].
11 The defendant would have completed his custodial term before the Covid-19 pandemic
12 struck, but he absconded from custody in April 2017. He was a fugitive for approximately
13 40 months until approximately August 2020 when he was arrested and returned to custody
14 to complete his term of incarceration. [Doc. No. 71, at ¶27; Doc. No. 78, at 2.]

15 Defendant pled guilty to the importation of 0.62 kilograms of heroin, an offense
16 carrying a five-year mandatory minimum term. The defendant had two prior drug
17 trafficking convictions and was determined to be a career offender. His criminal history
18 was lengthy, with numerous probation and supervised release revocations. He also has a
19 lengthy history of substance abuse. The defendant's guideline range was calculated at 130
20 to 162 months. [Doc. Nos. 30, 37.]

21 The sentencing judge considered all the 18 U.S.C. § 3553(a) factors, including the
22 seriousness of the offense, the need for general deterrence and the defendant's personal
23 characteristics and other mitigating factors in arriving at a slightly below guideline
24 sentence of 120 months. [Doc. No. 55.] Because of the defendant's escape from custody
25 in 2017 he is now scheduled for release on March 9, 2024.

26 **III. Compassionate Release Considerations**

27 The Court considered the § 3553(a) factors at the time of sentencing and those
28 considerations remain largely unchanged, with the notable addition that the defendant

1 reoffended when he escaped custody and was a fugitive for over three years. His disregard
2 for the law and the orders of the court demonstrate that he is a danger to the community
3 and belie his argument that at his advanced years he is not a recidivist threat.

4 In support of his motion the defendant reports that he has various medical conditions
5 that in consideration of his age make him a substantially more vulnerable to serious
6 complications should he contract the Covid-19 virus. BOP correspondence provided by
7 the defendant however indicates that the defendant tested positive for Covid-19 on
8 December 18, 2020 and was placed in isolation until January 6, 2021. There is no
9 indication that the defendant experienced any complications from his exposure.¹ Having
10 been exposed, the defendant has not demonstrated that he is at an increased risk of re-
11 contracting the virus before he can receive a vaccination.

12 The defendant's circumstances do not meet the requirements for compassionate
13 release under 18 U.S.C. § 3582(c)(1)(A)(i) as set forth in the policy statement. He does
14 not have a terminal illness or a serious medical condition that substantially diminishes his
15 ability to provide self-care within the environment of a correctional facility.² USSG
16 1B1.13, cmt. n.1 (A). The defendant's concerns about potential re-exposure to the COVID-
17 19 virus alone does not qualify as an extraordinary and compelling reason to reduce his
18 sentence.

19 Defendant's Motion to Reduce his Sentence is **DENIED**.

20 IT IS SO ORDERED.

21 Dated: 4/15/2021

22 
23 Hon. Cathy Ann Bencivengo
24 United States District Judge

25 ¹ The defendant disputes his Covid-19 positive test result primarily on the basis he claims he was
26 asymptomatic in December 2020, except for coughing attacks and an inability to breath that he had since
March 2020 when he was a fugitive.

27 ² The defendant devotes significant pages in his motion to complaints about health care he received
28 while he was a fugitive. This does not support an argument that he cannot receive adequate care for his
health issues in a BOP facility.